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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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ALAMEDA COUNTY MEDICAL CENTER - JOHN GEORGE PSYCHIATRIC PAVILLION

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 OAKLAND DIVISION

11 ANNETTE M. FILENA, individually and as
successor in interest for decedent, Debra
12 Kincaid,

13 Plaintiff,

14 vs.

15 ALAMEDA COUNTY MEDICAL CENTER -
JOHN GEORGE PSYCHIATRIC PAVILLION
16 and DOES 1-100, inclusive,

17 Defendants.

Case No.

C07-05462

SBA

NOTICE OF REMOVAL OF ACTION

28 U.S.C. §§ 1441(B)

BY FAX

18 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
19 DISTRICT OF CALIFORNIA:

20 PLEASE TAKE NOTICE that defendant ALAMEDA COUNTY MEDICAL CENTER -
21 JOHN GEORGE PSYCHIATRIC PAVILLION (hereafter "ACMC") hereby removes to this Court
22 the above-described action from the Alameda County Superior Court, Case No. C07 347289,
23 where the action is now pending, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. In support
24 thereof, ACMC states as follows:

25 BACKGROUND

26 1. ALAMEDA COUNTY MEDICAL CENTER - JOHN GEORGE PSYCHIATRIC
27 PAVILLION is the sole named defendant in the above-entitled action.

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2. The above-entitled action was filed in the Alameda County Superior Court on September 20, 2007 as Case No, C07 347289, and is now pending in that court. Defendant was personally served with the complaint on September 26, 2007. See Declaration of Aaron T. Schultz, ¶ 2; see also **Exhibit A**, plaintiff's Summons, Complaint, and Civil Cover Sheet, Proof of Service of Complaint filed with the Superior Court of Alameda County as Case No. RG07347289, attached hereto the Declaration of Schultz.

3. The Complaint, filed by the mother of decedent Debra Kincaid, includes five stated tort causes of action, including Wrongful Death, Dependent Adult Abuse, Patient Bill of Rights Violations, Negligence – Breach of Mandatory Duties, Negligence Per Se, and two causes of action brought pursuant to 42 U.S.C. § 1983 for violations of the Fourteenth Amendment.

4. In her complaint, plaintiff states that on November 30, 2006 decedent was admitted to ACMC after being involuntarily detained under California's Welfare & Institutions Code Section 5150. See Complaint ¶ 8. She alleges that during decedent's stay at ACMC, which lasted from November 30th to December 30th, decedent received deficient and or improper treatment, eventually resulting in her death. Plaintiff contends that ACMC maintained and implemented a custom and practice of deliberate indifference of the serious medical needs of its patients confined to the locked psychiatric facility, and the stated deficiencies in medical care and treatment provided, resulted in her daughter's death.

REMOVAL PROCEDURE

5. This notice of removal is timely because it was filed within (30) days of service. See 28 U.S.C. § 1446(b). Attached as **Exhibit A** to the Declaration of Aaron T. Schultz is a true and correct copy of the Summons, Complaint, Civil Cover sheet, the Declaration by Decedent's Successor in Interest Annette M. Filena, the Notice of Judicial Assignment for All Purposes, and the Proof of Service of Complaint filed with the court in this action. Defendant ACMC is unaware of any other pleadings that have been filed in this matter. See Declaration of Schultz,

¶ 4.

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6. Defendant will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d)

7. A copy of this notice will be filed with the clerk of the Alameda County Superior Court as required by 28 U.S.C. § 1446(d).

FEDERAL QUESTION JURISDICTION –

42 U.S.C. § 1983

8. The above-described action is a civil action of which this Court has original jurisdiction in that it is founded on a claim of right arising under the Constitution, treatise or laws of the United States. It thus may be removed pursuant to 28 U.S.C. §§ 1331 and 1441(b). Specifically, plaintiff's Sixth and Seventh Causes of Action allege that defendant, acting under color of state law, violated of plaintiff's and/or decedent's rights under the Fourteenth Amendment. These claims are brought pursuant to 42 U.S.C. § 1983 and therefore originate under the Constitution and laws of the United States and thus may be removed. *See Grubbs v. General Electric Credit Corp.*, 405 U.S. 699, 702 (1972); *Reitz v. Persing* 831 F.Supp. 410, 417 (M.D.Pa.,1993).

SUPPLEMENTAL JURISDICTION –

STATE LAW CLAIMS

9. In addition to the claims brought pursuant to 42 U.S.C. § 1983, plaintiff's complaint also includes several other causes of action based on state law. Since there is a federal question under 42 U.S.C. § 1983 before the Court, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 as well as 28 U.S.C. § 1343(a)(3) and (4), it therefore has and can retain jurisdiction over the pendent state claims pursuant to 28 U.S.C. § 1367(a).

VENUE

10. United States District Court for the Northern District of California is the jurisdictional district embracing the place where Case No. C07 347289 was filed by plaintiff and is therefore the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

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INTRADISTRICT ASSIGNMENT

11. This case should be assigned to the Oakland Division of this Court because a substantial part of the events or omissions which give rise to plaintiff's claims occurred in Alameda County. See Complaint, ¶ 3; Civ. L.R. 3-2(d).

WHEREFORE, defendant requests that this action proceed in this Court as an action properly removed to it.

Dated: October 25, 2007

GALLOWAY, LUCCHESI, EVERSON &
PICCHI

By: 
AARON T. SCHULTZ, ESQ.
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ALAMEDA COUNTY MEDICAL CENTER
- JOHN GEORGE PSYCHIATRIC
PAVILLION